IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/11/2004

CORAM

THE HON'BLE MR.B.SUBHASHAN REDDY, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE K.GOVINDARAJAN

W.A.Nos.968 of 2004
and
WA. 3074 of 2003
& 3201 of 2003
and
W.A.M.P.Nos.1751 of 2004 and 4879, 4880, 5102 & 5103 of 2003

W.A.No.968 of 2004
Dilip Bhandari,
No.19, Rosary Church Road,
Mylapore, Chennai - 600 004. ..Appellant.

-Vs-

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
8, Gandhi Irwin Road, Egmore,
Chennai - 600 008. ..Respondents.

W.A.No.3074 of 2003

Mrs. A.Sreedevi,
Rep. by her Power Agent
Mr.Dilip Bhandari,
No.19, Rosary Church Road,
Mylapore, Chennai - 600 004. ..Appellant.

Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2. The Member Secretary,

Chennai Metropolitan Development Authority,
8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3.R.Ramachandran
4.M/s.Shanthi Builders,
rep. by its partner,
Gowtham Chand. ..Respondents.

W.A.No.3201 of 2003

M/s.Shanthi Builders,
Rep. by its Partner,
Gowtham Chand. ..Appellant.

Vs.

1.Mrs.A.Sreedevi,
rep. by her Power of Attorney Agent,
Dileep Bhandari.

2.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

3.Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Chennai - 8.

4. R.Ramachandran ..Respondents.

PRAYER: Appeals against the common order of the learned single Judge passed on 23.09.2003 in W.P.Nos.15952, 17159 & 17186 of 2003, as stated therein.

!Mr.R.Krishnamuthi, Senior Counsel :: For Appellant in W.A.3201/2003
For M/s.Aiyar & Dolia

Mr.R.Krishnamurthi, Senior Counsel :: For Appellant in W.As.3074/2003

For M/s.P.Subba Reddy & 968/2004

Mr.N.R.Chandran, Advocate General :: For Chennai Corporation
Mr.C.Ravichandran

Mr.K.A.Ravindran :: For Member Secretary, CMDA

^Mr.Srinath Sridevan For Respondent -4 in
W.A.3201/04 & For Respondent-3 in WA.3074/03

:J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

These three writ appeals are directed against the common order passed by the learned single judge in W.P.Nos.15952 and 17159 of 2003. Question for consideration is whether in the facts and circumstances, the plea of the appellants for regularisation of the unauthorised construction of multi-storeyed structure can be acceded to.

2. In W.A.No.968 of 2004, one Mr.Dilip Bhandari, General Power of Attorney to Mrs.A.Sreedevi, the owner of the property, is the appellant, and it is directed against the order in W.P.No.17159 of 2003. Mrs. A.Sreedevi, herself is the appellant in W.A.No.3074 of 2003, which is directed against the order in W.P.No.15952 of 2003. The builder, namely., Shanthi Builders, who had entered into an agreement with the owner of the property, is the appellant in W.A.No.3201 of 2003, which is filed against the same order in W.P.No.15952 of 2003. In fact, common order has been passed by the learned single judge in W.P.Nos.15952, 17159 and 17186 of 2003. There is no appeal against W.P.No.17186 of 2003.

3. W.P.No.15952 of 2003 has been filed questioning the order dated 3 0.5.2003 passed by the Commissioner, Corporation of Chennai under Section 258 of the Madras City Municipal Corporation Act, calling upon the petitioner therein to fence off, take down the floors above 4th floor, secure and repair stilt plus 4 floors thereon, so as to prevent any danger therefrom. W.P.No.17159 of 2003 was filed questioning the notice dated 30.5.2003 issued by the Member Secretary, Chennai Metropolitan Development Authority, Chennai forfeiting the security deposit of Rs.70,000/- for the building and Rs.10,000/- for the display board. The parties are hereinafter referred to as Owner, Builder, Municipal Commissioner and CMDA.

4. The builder had entered into a contract with the owner for the development of the property for constructing stilt plus 4 floors and permission was sought for and the same was granted in the year 2001. While planning permission was granted by CMDA, permission for construction has been sanctioned by the Municipal Commissioner. But, instead of stilt plus 4 floors, which is clothed with the permission, the builder had constructed, obviously with the consent of the owner, stilt plus 8 floors, and this fact is not in dispute. A regularisation scheme was framed by the Government, by which structures, which are unauthorised, can be regularised, subject to some conditions. It is stated that the builder has remitted a sum of Rs.13 lakhs and odd for regularisation, but there is no order of regularisation as yet. When sewerage line was sought to be laid, it came to light that some columns developed cracks and steal rods therefrom got exposed and bent, which posed threat of damage to the property and danger to the public in general and the neighbours in particular. In fact, there was a complaint by the neighbours,

who formed an association namely., Proxima Owners' Association in residential complex No.10, Bishop Wallers Avenue, Mylapore, Chennai - 4, which is adjoining to the building in the instant case. One Mr.R.Ramachandran, who made a complaint on behalf of the above association, is one of the respondents herein.

5. The extraordinary jurisdiction under Article 226 of the Constitution of India, which is an equitable remedy, has been invoked not complaining of any arbitrary action of the legal authorities mentioned above. But, only to grant equitable relief by permitting the appellants to strengthen the building outwardly, by way of support to the existing structure, so as to make it viable for occupation. The venture is commercial in nature and the writ is sought for to permit the owner and the builder to make some amends to the existing structure, so as to enable them to sell out the flats and enrich themselves. It is not a case of a person not having a house has got some plot and constructed house by his hard earned money by struggling in life, and seeking the equitable remedy from the Court by condoning some deviations in the construction, as compared to the sanctioned plan. It is not that any poor person shelterless has made some unauthorised construction on his own land without encroaching upon anybody's rights and seeking to condone some lapses, which can be condoned without affecting the public interest. In the above instances, the equity jurisdiction of this Court can be invoked so as to do social justice. But the instant case is different. The appellants are economically well placed and the equity jurisdiction is being sought for business venture and for enriching themselves by pure avarice and knowingly and deliberately violated the provisions of the statute governing the construction of a multi-storeyed structures and then seeking to condone the same by permitting them to improve upon the structures, which are already existing and which are found to be deficient in quality, as compared to the volume of constructions from the soil level to the top, weak foundation, pillars, beams etc., and it is an admitted case that steel component conforms only to 41% of the requirement. The reason is obvious. Permission was sought for only for stilt and 4 floors and steal design had been made only to suit the said quantum of construction, so also the digging of foundation. Now, the appellants want the intervention of the Court to use some modern expertise and technology to boost up the strength of the structures, both at the ground level and also upwards in the columns and beams. The learned single Judge has gone into that aspect also and perused the reports of the experts and found that the structures cannot be improved, so as to make the inhabitants to be inducted safe. During the pendency of the writ appeals a petition was filed permitting the Indian Institute of Technology, Madras to give expert opinion to make the constructions strong from bottom to top. But, there is no such improvement in the technological aspects depicted even by the latest report filed before us on 28.04.2004, excepting certifying what the other experts have opined. There is no separate evaluation by Indian Institute of Technology, Madras. Objections have been filed to the above report by Municipal Commissioner, CMDA, as also the objector - Mr.R.Ramachandran, who is the neighbour and leading the association of the inhabitants in the neighbourhood, and those objections are fit to be upheld for the reasons stated above and they are accordingly upheld.

6. Mr.R.Krishnamurthi, learned Senior Counsel appearing for the appellants has cited a judgment of the Supreme Court in RAJATHA ENTERPRISES Vs. S.K.SHARMA (1989 (2) SCC 495) in support of his argument that even if some structures in a complex are unauthorised and had been made in excess of the sanction, it is not necessary that they should be demolished and that every effort should be made to see that the structures are not demolished. But, on facts, the above case is distinguishable from the instant one. In the above case of Rajatha Enterprises, public interest litigation was filed by one S.K.Sharma seeking demolition. But, having regard to the provisions of the Act governing the said case, and having regard to the finding arrived at by the Supreme Court that there was no objection raised by any neighbour, that there was no danger to neighbourhood, and that no public interest suffered, and also taking into consideration that the constructions which were made were strong enough to sustain, had condoned the deviations subject to such charges as may be levied by the local authority. But, the facts in the instant case are entirely different. The neighbourhood has objected to the unauthorised constructions, as unauthorised constructions posed a danger, and indisputably the quality of construction is deficient because of the volume of construction being in far excess than planned and designed. The learned single Judge has meticulously gone into the matter dealing every detail and rightly held that writ prayer cannot be acceded to. The learned single Judge has also rightly relied upon the Judgment of the Supreme Court in M.I. BUILDERS PVT. LTD., Vs. RADHEY SHYAM SAHU (1999 (6) SCC 464) as the facts arising in that case as also legal principles stated are squarely applicable to the facts of the instant case. The appellants did not make out any case for invocation of equity jurisdiction, and in fact, it was held by the Supreme Court in SHANGRILA FOOD PRODUCTS Vs. L.I.C. OF INDIA (AIR 1996 SC 2410) that while the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice, keeping also in mind the principles of equity, but cautioned that one of the ends of equity is to promote honesty and fair play. It cannot be said that the appellants had acted honestly and with any sense of fair play, and as such, question of invocation of equitable jurisdiction under Article 226 of the Constitution of India does not arise at all. If that be so, what is said in M.I.Builders Case, cited supra, has to be applied, wherein it was held that unauthorised constructions should not be condoned even if the builder has invested considerable amount, and this dictum is also bordering rule of law and that exercise of judicial discretion in moulding the relief is not called for in such cases, as that would encourage and perpetuate the illegality. Applying the said law as the law of the land in the facts of the case under Article 141 of the Indian Constitution, we dismiss these writ appeals with costs quantified at Rs.15,000/- (Rupees fifteen thousand only) payable by the appellants to the respondents in equal proportion. Consequently, all the connected miscellaneous petitions are closed.

10..11..2004.

sm/pv

Internet: Yes

Copy to:-

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